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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,567	12/05/2001	Matthew R. Hyre	5352-05	7992

7590 06/12/2006

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EXAMINER
LOPEZ, CARLOS N

ART UNIT	PAPER NUMBER
1731	

DATE MAILED: 06/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/005,567	HYRE ET AL.	
	Examiner	Art Unit	
	Carlos Lopez	1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 March 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3* is/are rejected.

7)☒ Claim(s) *4-6* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

After further consideration the finality of the rejection of the last Office action is withdrawn to correct a typing error in the body of the pending rejection. In particular the body of the rejection refers to Crowder but the rejection's first line is to Virog. Hence the rejection should be Rodriguez-Wong et al US 5,807,419 ('419) in view of Crowder ("Electric Drives and Their Controls", Richard M. Oxford Science Publications, 1995, Pages 188-191) and not Rodriguez-Wong et al US 5,807,419 ('419) in view of Virog.

As previously noted, the amendment to claim 3 is being entered. The objection to the drawing is being withdrawn.

Specification

The amendment filed 10/26/05 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the incorporation of US patent 5,445,662 into the specification is not support by the originally filed specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez-Wong et al US 5,807,419 ('419) in view of Crowder ("Electric Drives and Their Controls", Richard M. Oxford Science Publications, 1995, Pages 188-191). Rodriguez-Wong discloses a glass-forming machine in order to shape a glass parison in a blowing mold (Abstract). The claimed "a blow head assembly" is '419 element 50. The claimed "support means for supporting said blow head assembly" is deemed as lock 52 of Rodriguez-Wong disclosure. The "first displacement means for displacing said support means to displace said blow head assembly between a remote up position and an advanced down position" is shown by '419 as piston element 56. The claimed blow tube displaceable between an up and down position is shown by Rodriguez-Wong as element 30. The second displacement means for displacing said blow tube from the up position down to the down position is deemed as '419's cylinder piston assembly 20. Rodriguez-Wong is silent suggesting the displacement means having a profiled actuator. However, in pages 188-189, Crowder teaches "In drive systems, there have been an almost complete shift towards the use of digital rather than analog systems; this results in systems with a number of significant benefits." Among the benefits of using a digital drive is " the use of low-cost microprocessors", "digital control provides a highly flexible system", and "due to digital nature of the controller there will be no component variation". In view that digital drives systems are preferred over analog systems such as cylinder piston assembly disclosed by Rodriguez-Wong, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have chosen a digital drive (which includes a servomotor) as the means for displacing the blow tube because it provides a low cost, a highly flexible system, and

there is no component variation as taught by Crowder. Additionally, cylinder piston assembly 20 of Rodriguez-Wong is deemed as profiled since the blow tube is only actuated at specific times of the blow molding operation.

Additionally, the "off" and "on" positions are deemed to be when the displacement means is on or off the blow mold wherein the blow tube of Rodriguez-Wong is capable of being moved up and down a plurality of times.

It is noted that the claim 1 recites a plurality of functional features for which do no provide structural distinction to the combined teachings of the above references.

As noted in MPEP 2114:

> While features of an apparatus may be recited either structurally or functionally, claims< directed to >an< apparatus must be distinguished from the prior art in terms of structure rather than function. >In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971);< In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original).
>
> A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987) (The preamble of claim 1 recited that the apparatus was "for mixing flowing developer material" and the body of the claim recited "means for mixing ..., said mixing means being stationary and completely submerged in the developer material". The claim was rejected over a reference which taught all the structural limitations of the claim for the intended use of mixing flowing developer.

However, the mixer was only partially submerged in the developer material. The Board held that the amount of submersion is immaterial to the structure of the mixer and thus the claim was properly rejected.).

Hence, the claimed functional limitation of displacing the blow tube up and down a plurality of times while in the "on" position does not provide a structural distinction from the prior art. The claims are drawn to an apparatus and thus must be structurally distinguished from the prior art.

Additionally, the specification does not explicitly define the "on" position as referring to the blow head assembly engaging the mold to thus give weight to the allegation made in the appeal brief filed on 3/30/06 page 9.

In regards to claim 3, the blow tube is displaced in and out of the mold in order to cool the mold.

Allowable Subject Matter

Claims 4-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The primary reason for indicating allowable subject matter is that the profile actuator includes a "displacement profile which will displace the blow tube from the up position to the location where the upper neck portion meets the lower body portion at an average velocity higher than the average velocity at which the blow tube will be displaced from the location where the upper neck portion meets the lower body portion to the bottom of the blown parison" as recited in claims 4-6.

Response to Arguments

Applicant's arguments with respect to claims 1-3 have been considered but are unpersuasive. The response to the arguments have been noted above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lopez whose telephone number is 571.272.1193. The examiner can normally be reached on Mon.-Fri. 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571.272.1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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